THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22649 of 2006

01.11.2006

Between:

M/s.Midram Publications Pvt. Ltd., Secunderabad, represented by its Director Sri T.Venkatram Reddy

And another

… Petitioners

AND

The Collector & District Magistrate, Rangareddy District

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22649 of 2006

ORDER:

This writ petition is filed questioning the legality and propriety of a show cause notice bearing letter No.C1/2838/2004 dated 22.9.2006 issued by the Collector and District Magistrate, Rangareddy District, the first respondent herein, purportedly under Section 8B(iv) of Press and Registration of Books Act, 1867 (PRB Act, for brevity).

The brief fact of the matter essential for appreciating the controversy and convenient for the disposal of the matter *in limine* is noticed as follows. The petitioner is Indian company registered under the Companies Act, 1956 (initially it was Asian Age (North) Pvt. Ltd.,) having its registered office at Somajiguda, Hyderabad. The second petitioner is the Director of the first petitioner company and also printer and publisher of facsimile edition of foreign newspaper in India "International Herald Tribune" (IHT). The second petitioner filed a declaration as required under Section 4 of PRB Act. It appears that while filing the declaration as printer and publisher of IHT, the second petitioner filed declaration along with an affidavit with the Registrar of Newspapers in India regarding non-foreign tie-up stating that owners of IHT will not have any tie-up or collaboration with any foreign organisation in future without the prior permission of Government of India. Be it noted that IHT is internationally published Newspaper by

International Herald Tribune, SAS, France, with whom the first petitioner entered into an agreement on 11.2.2004 for printing, marketing, circulating and distributing the full edition of IHT Newspaper in India, after excluding all material against or derogatory to Indian republic.

On an allegation that even before the second petitioner gave a declaration under Section 4 of PRB Act, the first petitioner entered into a tie-up agreement with IHT, SAS, France on 11.2.2004, Hon'ble Minister for Information, Broadcasting and Parliamentary Affairs, Government of India, addressed a letter dated 05.5.2006 to the Hon'ble Chief Minister of Andhra Pradesh. The same was forwarded by Chief Secretary to Government of Andhra Pradesh by communication dated 20.9.2006 to the first respondent, who thereafter issued impugned show cause notice asking as to why the declaration authenticated by the first respondent should not be cancelled for allegedly filing an affidavit with false information and also for the reason that the publication of IHT is against law and guidelines of the Government.

Learned Counsel for the petitioners vehemently contends as follows. As the Government of India already advised the Government of Andhra Pradesh to cancel the authentication of the declaration, any enquiry by the first respondent is only formality. In case, the foregone conclusion to cancel the authentication is formalised by the first respondent by passing an order pursuant to the show cause notice, the petitioners who are bringing out IHT from Deccan Chronicle Press in Hyderabad, has to stop publication, which would violate freedom of press under Article 19(1)(a) of Constitution of India besides rendering large contingent of employees and workers jobless. He also submits that after serving show cause notice adequate time was not granted to the petitioners and even when such request was made to first respondent. The learned Counsel, therefore, contends that in view of the facts and circumstances of this case, the writ petition against show cause notice is maintainable.

Learned Assistant Government Pleader for Revenue (General-T), after getting instructions from the District Magistrate and Collector, Rangareddy District, submits that the District Collector will receive the explanation submitted by the petitioners and conduct hearing on 06.11.2006 and pass necessary order as per law, basing on the material available or that may be produced by the petitioners.

The Supreme Court in a catena of decisions has laid down that writ petition questioning the legality of a show cause notice stalling enquiry as proposed should not be entertained. It is now axiomatic that even where the question of jurisdiction is raised, a writ petition would not ordinarily lie unless the show cause notice is proved to be *non est* beyond any doubt.

In **State of U.P. v Shri Brahma Datta Sarma**[1], the Supreme Court held:

> The High Court was not justified in quashing the show-cause notice. When a show-cause notice is issued to a Govt.servant under a statutory provision calling upon him to show-cause, ordinarily the Govt.servant must place his case before the authority concerned by showing cause and the Courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. **The purpose of issuing show-cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature.** The High Court in our opinion ought not to have interfered with the show-cause notice.
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> (emphasis supplied)

In **Special Officer, ULC v. M.Vijayalakshmi**[2], a Division Bench of this Court was concerned with the validity of a show-cause notice issued by the Government of Andhra Pradesh under Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976. While holding that a writ petition seeking judicial review under Art.226 of the Constitution at the stage of show-cause notice is not maintainable, it was held as follows:

> Two principal issues arise for consideration: Firstly, the power of the State Government to review the order in terms of the provisions of Section 24 of the Act and secondly, the jurisdiction of the High Court under Article 226 of the Constitution in the matter of interference at a stage of the proceeding when the governmental authority did deem it fit to exercise its statutory power and has issued a show-cause notice in terms therewith. Turning attention onto the second count first, **it is rather pertinent to note that scope of judicial**

reviewability in a situation like the present one is extremely limited and the High Court would be rather slow and loath to intervene at this stage of proceedings since the authority ought to be given a free hand and a full play in the matter of enquiring into the circumstances which prompted the authority concerned to issue the show cause notice. It is in this context, the observations of a learned single Judge of the Calcutta High Court in the case of **I.T.C.Limited vs. Union of India**[3] seem to be rather apposite wherein the learned single Judge observed that ordinarily, **a writ petition is not maintainable against a show-cause notice in as much as, when a show-cause notice is issued, the party gets an opportunity to place his case before the authority concerned and there are elaborate proceedings by way of an appeal and/or revision against such order passed in such proceeding…**

(emphasis supplied)

A reference may also be made to a recent judgment of Supreme Court in **Special Director V Mohd.Ghulam Ghouse**[4], wherein it is laid down as under:

> This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, **writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court.** Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at

the threshold by the interim protection granted.

(emphasis supplied)

In view of legal position, this Court is not inclined to interfere in the matter especially when the first respondent is yet to conduct statutory enquiry as required under Section 8B of PRB Act. There is no gainsaying that it would be improper and illegal for a statutory authority acting quasi-judicially, to abdicate its powers and functions and act according to the dictates of the higher authorities, be it Hon'ble Union Minister or Hon'ble Chief Minister of the State (see **Purtabpur Company Limited v Cane Commissioner, Bihar**[5]). But such a ground would not be available when the competent statutory authority in compliance with requirement of law issues a show cause notice for conducting enquiry. The first respondent is a competent authority to authenticate a declaration of printer and publisher under Section 4 of PRB Act. If such authentication is to be cancelled, and for that matter an enquiry is to be conducted, there is nothing wrong for the District Magistrate and Collector to look into any material from any quarter including information furnished by the Government of India and the State Government. That is also clear from a plain reading of Section 8B of PRB Act. It is needless to point out that the first respondent, who is alone competent to take action under Section 8B and Section 14 of PRB Act, cannot act in a routine manner nor pass an order as per the wishes of the higher authorities. Such course of action would not stand the scrutiny by Court of judicial review. These observations would certainly dispel any doubt in the mind of anybody while the matter is dealt with by the District Magistrate.

Learned Counsel for the petitioners submits that the petitioner received show cause notice dated 22.9.2006 on 30.10.2006 and the petitioners have time till 10.11.2006. He also submits that the petitioners would submit explanation along with necessary material by 07.11.2006. The petitioners may submit explanation along with necessary material by 07.11.2006. The first respondent should afford adequate opportunity to the petitioners of being heard, conduct enquiry on 09.11.2006 and pass appropriate orders immediately duly recording detailed reasons on all the points that may be raised by the petitioners.

The writ petition, with the above observations and directions, is accordingly disposed of. No costs.

November 01, 2006

(**V.V.S.RAO,J**)

NOTE:
Issue order copy by
03.11.2006.
(By order)
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[1] AIR 1987 SC 943

[2] 1998 (6) ALT 627 (D.B.)

[3] AIR 1989 Cal.294

[4] (2004) 3 SCC 440

5 AIR 1970 SC 1896